Supreme Court, U. S.
FILED
DEC 29 1977
MICHAEL RODAK, JR., CLERK

No. 77-978

In the
Supreme Court of the United States
OCTOBER TERM 1977

Western Chain Company, a Corporation,

Petitioner,

vs.

Nell Brownlee, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST JUDICIAL DISTRICT

PAUL M. LURIE
180 North Michigan Avenue
Chicago, Illinois 60601
(312) 641-5252
Attorney for Petitioner

Of Counsel
FOHRMAN, LURIE, HOLSTEIN,
SKLAR & COHLE, LTD.
180 N. Michigan Avenue
Chicago, IL. 60601

The Scheffer Press, Inc.—(312) 263-6850

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1977

No.

Western Chain Company, a Corporation,

Petitioner,

vs.

Nell Brownlee, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST JUDICIAL DISTRICT

Paul M. Lurie, on behalf of Western Chain Company, petitions for a Writ of Certiorari to review the judgment of the Appellate Court of Illinois, First District, entered in this case on May 10, 1977.

OPINION

The opinion of the Appellate Court of Illinois, First District is reported at 49 Ill. App. 3d 247, 364 N.E.2d 926. A copy of the opinion is attached as Appendix "C".

JURISDICTION

The judgment of the Appellate Court of Illinois, First District, was entered on May 10, 1977 (Appendix "A"). No petition for rehearing was filed. The Supreme Court of Illinois denied Western Chain's, Defendant-Petitioner's petition for leave to appeal on September 30, 1977. The jurisdiction to review the final judgment of the Appellate Court of Illinois, First District, is conferred upon this court by 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

Whether the full faith and credit clause of the United States Constitution requires Illinois to enforce a default judgment obtained in Mississippi in violation of the Due Process clause of the Fourteenth Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article IV §1
United States Constitution, Fourteenth Amendment

STATEMENT OF THE CASE

The Respondent initiated a products liability claim in Mississippi against the Petitioner, Western Chain Company. The only process received by Petitioner, in accordance with Mississippi procedure, was a Summons which is reproduced in Appendix "B". The Complaint was not attached to the service, as indeed it was not required to be, nor did the Summons describe the nature of the action nor the amount claimed. Service was sent by registered mail from the Mississippi Secretary of State as authorized by that State's long arm jurisdictional statute.

Because such document failed to indicate the economic consequence of non-appearance, because Petitioner was unaware that its products were sold in Mississippi or that there was any claim involving the Respondents, and because of the poor health of the chief operating officer of the Petitioner, no appearance was initially made in the Mississippi proceeding.

Without further notice to the Petitioner, Respondents took a default judgment against the Petitioner for $204,-160.00. Ninety days after the judgment was entered Respondents' attorney first notified the Petitioner of the judgment. Petitioner then retained Mississippi counsel who went unsuccessfully to the Mississippi Supreme Court in an attempt to vacate the default judgment. The procedural burden upon the Petitioner in attempting to vacate a judgment after term was substantially greater than the burden before the expiration of the term time. A copy of the Mississippi Supreme Court's opinion is attached as Appendix "C".

Respondent then initiated a proceeding in Illinois to register the Mississippi judgment. The trial court's registration of the judgment was held by the Illinois Appellate Court. Leave to appeal to the Illinois Supreme Court was denied.

REASONS FOR GRANTING THE WRIT

The central issue raised by this Petition is the applicability of the full faith and credit clause of the Federal Constitution (Article IV §1) to a sister state judgment entered in violation of the Due Process clause.

Mississippi is the only jurisdiction in the United States which allows a default judgment to be taken of an unliquidated claim without any prior notice of the amount or nature of the claim. This procedure clearly violates the Due Process clause of the Fourteenth Amendment. *Mullane* v. *Central Hanover Trust Co.*, 339 U.S. 306 (1949).

This Court must explain to Illinois and other states the limits which *Griffin* v. *Griffin*, 327 U.S. 220 (1945) imposed upon *Baldwin* v. *Iowa State Traveling Men's Association*, 283 U.S. 522 (1931). *Griffin* says that even if the initial court has *in personam* jurisdiction, that jurisdiction does not prevent the sister state from examining the procedure by which a default judgment was procured for due process violations. Illinois wrongly interprets *Baldwin* to mean that once you appear in the initial state to vacate a default judgment, the entire proceeding is *res judicata*. *Griffin* expressly holds to the contrary.

Though argued before the Illinois trial and appellate Courts, *Griffin* was ignored in the opinions of both of those Courts.

The issues presented in this petition were properly raised by the Petitioner in the Illinois trial court in a motion to dismiss the Respondent's petition for registration and enforcement of the Mississippi judgment. These issues were also briefed and argued before the Illinois Appellate Court.

CONCLUSION

The constitutional principles which Petitioner seeks to apply can be effectuated by the granting of the Petition for Writ of Certiorari to the Appellate Court of Illinois, First Judicial District, the vacating of the judgment below and the remanding of this case to be considered in the light of *Griffin* v. *Griffin*.

Respectfully submitted,

PAUL M. LURIE
180 N. Michigan
Chicago, IL. 60601
(312) 641-5252
Attorney for Petitioner

Of Counsel
FOHRMAN, LURIE, HOLSTEIN,
SKLAR & COHLE, LTD.
180 N. Michigan Avenue
Chicago, IL. 60601

APPENDIX A

62553

May 10, 1977

MRS. NELL BROWNLEE, DONNA JOE BROWNLEE, a Minor, BILLY BROWNLEE, JR., a Minor, KAREN JEAN BROWNLEE, a Minor, ROBERT WINFIELD BROWNLEE, a Minor, SAID MINORS APPEARING BY MRS. NELL BROWNLEE, MOTHER AND NEXT FRIEND,	)	APPEAL FROM CIRCUIT COURT OF COOK COUNTY.
Plaintiffs-Appellees,	)	
v.	)	
WESTERN CHAIN COMPANY, a corporation,	)	HONORABLE BEN SCHWARTZ, PRESIDING.
Defendant-Appellant.	)	

MR. JUSTICE PERLIN delivered the opinion of the court:

Defendant appeals from a denial of its motion to dismiss plaintiffs' complaint and from a summary judgment allowing plaintiffs to register a foreign judgment against defendant. (Ill. Rev. Stat. 1975, ch. 77, par. 88, et seq.) Defendant contends that the trial court erred in enforcing a foreign default judgment when defendant allegedly received insufficient notice of the action in the foreign court.

The facts in this litigation are undisputed. Defendant is an Illinois corporation engaged in the manufacture and distribution of metal link chains. On January 15, 1973, Arthur W. Hill, its president, general manager and principal stockholder, received a registered letter from the Secretary of State of Mississippi forwarding a summons. The forwarding letter and summons had been receipted by John R. Miller, an employee of defendant, and given to Mr. Hill. The letter informed defendant that the enclosed copy of process had been served on its agent, the Secretary of State of Mississippi. The letter further informed defendant that a suit was pending in the circuit court of Simpson County, Mississippi, in which the corporation was designated as defendant and Mrs. Nell Brownlee, et al. were plaintiffs.

The copy of process consisted of a summons which advised defendant that service had been had upon the Secretary of State as defendant's resident agent under Mississippi's "long arm" statute. (Mississippi Code Annotated 1972, Section 13-3-63.)

BEST COPY AVAILABLE

The summons did not set forth the amount claimed, and no copy of the complaint was forwarded to defendant. A term of court was to be held at the courthouse in Mendenhall, Mississippi, on the second Monday of March, 1973, at which time defendant was to answer the declaration of Mrs. Nell Brownlee, et al. Defendant was required "to plead on or before the first day of the term of court to which the process is returnable or within thirty days after service of process, which ever would cause the pleading to be filed earlier."

The summons provided that "the amount actually demanded in this suit is the sum stated in the said declaration and lawful interest and costs." No amount, however, was stated in the summons or in the accompanying letter. Judgment was said to be "demanded at return term."

Mr. Hill recorded a question mark on the process and put it in "a pile of stuff on my desk. . . ." On March 20, 1973, while the summons and notice remained on Mr. Hill's desk, a default judgment was entered against defendant in the sum of $204,160. Defendant subsequently received a letter from the attorney representing Mrs. Brownlee and her minor children on June 22, 1973, notifying it of the March 20, 1973, default judgment. Enclosed with the letter were copies of the Interlocutory Judgment and the Final Judgment.

Defendant thereupon investigated and found that a default judgment had been the result of the following proceedings: The widow and minor children of one Billy Brownlee had filed suit against defendant on January 9, 1973, in the circuit court of Simpson County, Mississippi, seeking damages for the death of Billy Brownlee on May 5, 1971. Brownlee was allegedly working beneath a car held by a chain claimed to have been manufactured by defendant when a link in the chain broke because of an alleged manufacturing defect causing the car to fall and crush Brownlee to death. The chain in question was claimed to have been pur-

chased on April 27, 1971, from a retail store in Magee, Mississippi. On March 20, 1973, an interlocutory default judgment with a writ of inquiry and a final judgment were entered against defendant in the sum of $204,160 plus costs and 6% interest from the date of judgment.

On August 6, 1973, defendant filed a special and limited appearance in the circuit court of Simpson County, Mississippi, and a motion to vacate the default judgment on the grounds of lack of notice and lack of jurisdiction. On October 8, 1973, the Mississippi trial court denied defendant's motion, and defendant appealed. When the Supreme Court of Mississippi affirmed the trial court in Western Chain Co. v. Brownlee (1975), 317 So.2d 418, defendant sought no further direct appeal.

Subsequently plaintiffs filed a petition for registration of the Mississippi judgment in the circuit court of Cook County, Illinois. After defendant filed a verified motion to dismiss plaintiffs' petition and plaintiffs filed a motion for summary judgment, the trial court granted plaintiffs' motion for summary judgment, and defendant appealed to this court.

Defendant contends that the special and limited appearance it filed in the Mississippi court does not bar it from collaterally attacking the judgment entered in the case at bar.

Article IV, Section 1 of the United States Constitution provides that "Full Faith and Credit shall be given in each State to . . . the judicial Proceedings of every other State." This section, commonly known as "the Full-Faith-and-Credit Clause," is intended to establish as constitutional law the principles embodied in the common law doctrine of res judicata: that a lawsuit, once pursued to judgment, should be as conclusive of the rights of the parties in every other court as it is in the court where the judgment was rendered. (Riley v. New York Trust Co. (1942), 315 U.S. 343, 349, 86 L. Ed. 885, 62 S. Ct. 608; Durfee v. Duke (1963), 375 U.S. 106, 109, 11 L. Ed.2d 186, 84 S. Ct. 242.)

Illinois adopted the Uniform Enforcement of Foreign Judgments Act (Ill. Rev. Stat. 1975, ch. 77, par. 88 et seq.) to facilitate the enforcement of judgments across state lines. (Light v. Light (1958), 12 Ill.2d 502, 505, 147 N.E.2d 34.) The judgment debtor, however, is afforded the opportunity, after service of process, to avail himself of any defenses he may have to the enforcement of the judgment. Secs. 4, 5, 8, 13 of the Act.

Defendant, in the case at bar, raises the defense of lack of jurisdiction. It refers us to Mullane v. Central Hanover Trust Co. (1949), 339 U.S. 306, 94 L. Ed. 865, 70 S. Ct. 652, in arguing that the failure of the Mississippi summons to state the amount of plaintiffs' claim denied defendant due process of law. Mullane requires notice which is "reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections. . . ." (339 U.S. 306, 314.) Mullane did not, however, involve a full-faith-and-credit question, nor did it involve a collateral attack.

Defendant received notice of a lawsuit pending in Mississippi when its employee, Mr. Miller, signed a receipt for the notice and gave it to Mr. Hill, defendant's president. While Mr. Hill was distracted from his duties as president by the death of his wife and his own personal health problems, the trial court found him to be well aware of the affairs of the legal world. Moreover, defendant appears to be a long established manufacturing corporation and not a legally unsophisticated individual.

Defendant filed a special and limited appearance in the Mississippi court to vacate the default judgment. Its motion to vacate was denied and the Mississippi Supreme Court affirmed. (Western Chain Co. v. Brownlee (1975), 317 So.2d 418.) Rather than seek further review, defendant then chose to attack collaterally the jurisdictional basis of the Mississippi judgment in the Illinois enforcement proceeding.

While a court of one state may constitutionally inquire into the jurisdictional basis of a foreign court's judgment, full faith and credit must be extended to that judgment when the inquiry discloses that the issue of jurisdiction has been litigated and decided in the rendering court. (Baldwin v. Iowa State Traveling Salesmen's Association (1931), 283 U.S. 522, 75 L. Ed. 1244, 51 S. Ct. 517; Cascade Chemical Coatings, Inc. v. Wellco Chemical Products Co. (1st Dist. 1973), 15 Ill. App.3d 1056, 305 N.E.2d 595, cert. denied in 419 U.S. 841.) "Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest and the matters once tried shall be considered forever settled as between the parties." 283 U.S. 522, 525.

Defendant was afforded the opportunity to litigate the notice and due process issue in Mississippi. We therefore believe the doctrine of res judicata bars defendant from attacking collaterally the Mississippi judgment in Illinois.

For the foregoing reasons the judgment of the circuit court of Cook County is affirmed.

JUDGMENT AFFIRMED.

DOWNING, P.J., and STAMOS, J., concur.

APPENDIX B

COURT SUMMONS

NO. 12,013

THE STATE OF MISSISSIPPI

TO THE SHERIFF OF ~~SIMPSON~~ HINDS COUNTY—GREETINGS:

WE COMMAND YOU HEREBY THAT YOU SUMMONS

WESTERN CHAIN COMPANY, 1807 Belmont Avenue, Chicago, Illinois, service of process to be had on Hon. Heber Ladner, Secretary of State, Jackson Mississippi, who is resident agent under Section 1437, Mississippi Code of 1942, as amended.

Defendant

if to be found in your County, so that they be before the Judge of the Circuit Court of said Simpson County, at a term thereof to be holden for the County aforesaid, at the Courthouse, thereof, in the Town of Mendenhall, Mississippi, on the Second Monday of March, A. D. 19 73 to answer the declaration of

MRS. NELL BROWNLEE, DONNA JOE BROWNLEE, A MINOR, BILLY BROWNLEE, JR., A MINOR, KAREN JEAN BROWNLEE, A MINOR, ROBERT WINFIELD BROWNLEE, A MINOR, SAID MINORS APPEARING BY MRS. NELL BROWNLEE, MOTHER AND NEXT FRIEND.

Plaintiff

against the said defendant now on file in the Clerk's office of said Court. And have then and there this summons.

(By Section 1519, Mississippi Code of 1942, as amended, you are required to plead on or before the first day of the term of court to which the process is returnable or within thirty days after service of process, which ever would cause the pleading to be filed earlier.)

The amount actually demanded in this suit is the sum stated in the said declaration and lawful interest and costs.

Judgment will be demanded at return term.

Issued the 9th day of January, 19 73

Declaration filed when summons issued. , P. Q.

Garland Reed, Circuit Clerk

ATTEST. (SEAL)

FILED
CIRCUIT COURT
SIMPSON COUNTY
JAN 16 1973
GARLAND REED, Clerk
D. C.

By , D. C.

APPENDIX C

IN THE SUPREME COURT OF MISSISSIPPI

NO. 48,140

WESTERN CHAIN COMPANY

V.

MRS. NELL BROWNLEE, ET AL.

BEFORE RODGERS, ROBERTSON AND BROOM:

ROBERTSON, JUSTICE, FOR THE COURT:

On March 20, 1973, the Circuit Court of Simpson County entered an interlocutory default judgment, and then a final judgment, based on writ of inquiry, for $204,160 against Western Chain Company, a non-resident corporation, and in favor of Mrs. Nell Brownlee, widow of Billy Brownlee, and her four minor children. The March, 1973, term of court ended on March 30, 1973. On August 6, 1973, Western Chain Company filed a motion to set aside and vacate these two judgments.

In its motion to set aside, Western Chain contended that, under the peculiar facts of this case, there was a failure of due process, and that the interlocutory and final judgments offended traditional notions of fair play and substantial justice. After a hearing on the motion, the court took the matter under advisement, and on October 8, 1973, rendered a written opinion overruling the motion. In its opinion, the court found:

"[S]aid briefs on behalf of the parties having been filed and the Court, after having examined the file in its entirety and particularly the matter pertaining to service of process in the manner and for the period of time required by law in such cases and all of the other evidence, is of the opinion and so finds that the Defendant has been afforded a fair and impartial hearing upon its Motion and, in view of the briefs filed and cases cited for and on behalf of the respective parties, the Court is of the opinion that there has been no fraud perpetrated upon the Defendant and that process in this case was served in the manner and for the period of time required by law; that Arthur W. Hill, President of the Defendant Corporation, actually received this process, studied its contents and placed thereon a question mark. The Court further finds that although Mr. Hill had lost a loved one, it was shown in the testimony adduced upon the hearing of this Motion that he has been President of the Defendant Company since its inception and was President of the original Corporation; that he appears to be unusually mentally alert and responsive to and understanding of legal and business terms, . . . [Emphasis added].

"The Court further finds that, . . . process was had in the manner and for the period of time required by law and it now appears that this process was received by the only one who had any authority, duty or obligation to act for and on behalf of Western Chain Company--its President, Arthur W. Hill; that he did read and keep, to the date of the hearing, the process from the Secretary of State."

We list the chronology of pertinent events:

On January 9, 1973, Mrs. Nell Brownlee, individually and for her four minor children, filed suit against Western Chain Company charging that her husband, 28-year-old Billy Brownlee, died on May 5, 1971, from injuries received on that day when a defectively made chain, manufactured and sold by Western Chain, broke and the front end of a wrecked car fell on him. The new chain had been purchased on April 27, 1971, from a retail hardware store in Magee, Mississippi, and was being used

on a Berry Motor Company wrecker to hoist the front end of a wrecked automobile. After the front end of the car had been raised, Brownlee went underneath the car to check the transmission to see if the car could be moved without damage to the transmission. The chain broke, the car fell upon him, and he was fatally injured.

The suit was brought under Mississippi Code Annotated section 13-3-57 (1972) which provides in part:

> "Any nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified under the constitution and laws of this state as to doing business herein, who shall make a contract with a resident of this state to be performed in whole or in part by any party in this state, or who shall commit a tort in whole or in part in this state against a resident of this state, or who shall do any business or perform any character of work or service in this state, shall by such act or acts be deemed to be doing business in Mississippi. Such act or acts shall be deemed equivalent to the appointment by such nonresident of the secretary of state of the State of Mississippi, or his successor or successors in office, to be the true and lawful attorney or agent of such nonresident upon whom all lawful process may be served in any actions or proceedings accrued or accruing from such act or acts, or arising from or growing out of such contract or tort, or as an incident thereto, by any such nonresident or his, their, or its agent, servant or employee. [Emphasis added].
>
> . . . .
>
> "Service of any process herein provided for to be made upon the secretary of state shall be made in like manner and procedure, inclusive of notice of service, and with the same force and effect, as is provided by law for service on nonresident motorist defendants under section 13-3-63, ... "

That part of Mississippi Code Annotated section 13-3-63 (1972), having to do with the service of process provides:

"Service of such process or summons shall be made by the sheriff of Hinds County, upon prepayment of the fees to which he is entitled by law, by serving two copies of the process or summons for each nonresident defendant, with a fee of five dollars ($5.00) for each such defendant on the secretary of state or by leaving two copies of said process or summons with the fee in the office of the secretary of state, and such service shall be service upon said nonresident defendant with the same force and effect as if such nonresident had been personally served with such process or summons within the State of Mississippi. One of the copies of such process or summons shall be preserved by the secretary of state as a record of his office. Notice of such service, together with a copy of the process or summons, shall be mailed forthwith as certified or registered mail, restricted for delivery to addressee only and with postage prepaid, by the secretary of state to each such nonresident defendant at his last known address, which address shall be written on the process or summons upon the issuance thereof by the clerk of the court wherein the action is pending, or notice of such service and copy of process or summons actually shall be delivered to the said defendant. The defendant's return receipt or evidence of defendant's refusal to accept delivery of such certified or registered mail, in case such notice and copy of process or summons are sent by certified or registered mail, or affidavit of the person delivering such notice and copy of process or summons, in case such notice and copy of process or summons actually are delivered, shall be filed in the court wherein such action is pending before judgment can be entered against such nonresident defendant. The secretary of state, upon receipt of such return receipt or evidence of the refusal of such defendant to accept delivery of such certified or registered mail, shall promptly return same to the clerk of the court wherein such action is pending, and the said clerk of the court shall promptly file and preserve same among the records of such action or proceeding. .... " [Emphasis added].

On January 11, 1973, in strict accord with the statute, the Hinds County Sheriff served two copies of the summons for Western Chain Company, 1807 Belmont Avenue, Chicago, Illinois, which summons was returnable before the Circuit Court of Simpson County on the second

Monday of March, 1973, on the Secretary of State in Jackson, Mississippi.

On that same day the Secretary of State mailed a copy of the summons, together with a letter giving notice of such service, to Western Chain Company by "REGISTERED MAIL DELIVER TO ADDRESSEE ONLY RETURN RECEIPT REQUESTED". The letter giving notice of such service and the copy of the summons were delivered on January 15, 1973, and the return receipt was signed "Western Chain Company John R. Miller."

On January 15, 1973, the letter from the Secretary of State and the copy of the summons were placed on the desk of Arthur W. Hill, president, general manager. and principal stockholder of Western Chain Company. Mr. Hill was 75 years of age, had lost his wife of 53 years on November 3, 1972, and, according to an affidavit of his doctor, was still suffering from depression, melancholy, anxiety and emotional upset well into the Spring of 1973. On January 15, 1973, Mr. Hill put a question mark on the letter from the Secretary of State, and placed the letter and the summons in a "pile" of correspondence on his desk.

There being no answer or pleading of any kind filed, on motion of the plaintiff, the Simpson County Circuit Court, on March 20, 1973, entered an interlocutory default judgment against Western Chain Company. On that same day, after a writ of inquiry, the trial court entered a final judgment against Western Chain Company for $204,160. The March, 1973, term of court ended on March 30, 1973.

On June 22, 1973, the plaintiff's attorney wrote Western Chain Company:

> "No answer was filed on behalf of your company, and a Default Judgment was entered by the Court. I enclose copies of the Interlocutory Judgment and the Final Judgment."

Upon receipt of this letter, President Hill checked back and found the letter from the Secretary of State and the copy of the summons in the pile of correspondence on his desk. He contacted his Illinois attorneys, but it was not until August 6, 1973, that the motion to set aside default judgment was filed.

In Smith v. Temco, Inc., 252 So.2d 212 (Miss. 1971), this Court held that Mississippi Code Annotated section 13-3-57 (1972), covered strict products liability suits. In Smith, the Court said:

> "In our view, one of the fundamental objects of the Legislature in adopting the 1964 amendment was to extend the personam jurisdiction of the courts of this State to the nonresident who may commit a tort in this State, either in whole or in part, to the injury of a resident of the State so as to provide a practical means for the enforcement of rights accruing under the products liability doctrine.
>
> "Under the amended statute, a nonresident manufacturer of a dangerously defective or unsafe product who places it in interstate commerce for the purpose of distribution and ultimate sale to consumers in other States, whether with a specific intent that it be distributed, sold and used in this State or not, may be subjected to a personam action for damages in the courts of this State by such consumer who may be injured in this State as a result of its defective or unsafe condition." [252 So.2d at 216].

In Ellis v. Milner, 194 So.2d 232 (Miss. 1967), this Court held that service of process under Mississippi's long-arm statute [Mississippi Code Annotated section 13-3-63 (1972)], was personal service of process authorizing the entry of a default judgment at the return term of court. In Ellis, we said:

> "In summary, personal process was had upon defendant through the Secretary of State on November 18, 1965, returnable to the December term of court. It was properly executed for that return term. Miss. Code Ann. §1848 (1956). Defendant failed to answer at the return term, although the process had been 'served personally' on him, in accord with the last sentence of Code Section 1519. Thus the trial court was authorized, on motion of plaintiff, to enter the default judgment. Cf. Miss. Code Ann. §1547 (1956); Id. §1519 (Supp. 1964)." [194 So.2d at 236].

The trial court was correct in granting an interlocutory default judgment, the final judgment based on writ of inquiry and in overruling the motion to set aside and vacate these judgments.

The final judgment of the circuit court is affirmed.

AFFIRMED.

GILLESPIE, C.J., PATTERSON, INZER, SMITH, SUGG And WALKER, JJ., CONCUR.